IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 213 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
P M DIESELS LTD. - Respondent(s)

==========

Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Present is a Reference, at the instance of the Revenue, for our opinion on the following question;

> *"Whether the Appellate Tribunal is right in law and of facts in directing the Assessing Officer to allow incentive production bonus of Rs. 9,56,080/-?"*

It appears that a claim was made before the Assessing Officer that any bonus, especially incentive production bonus, in addition to the regular bonus under the Payment of Bonus Act would be a deductible amount and the assessee would be entitled to the benefit to the said extent. The Tribunal, for deciding the matter in favour of the assessee, relied upon its earlier order in relation to assessment year 1985-86 and allowed the said deduction. The Revenue, being dissatisfied with the same, made an application for Reference, a Reference was accordingly made to this Court, and the same was registered as I.T.R. No. 300 of 1994. A Division Bench of this Court, vide its judgment dated 24.11.2005, observed that the question regarding payment would be a question of fact and if the payment is treated as part and parcel of the wages, which are undisputedly are allowable as deduction by the Revenue,

the same treatment is to be extended to the payment in question, i.e., production bonus. In view of the earlier Judgment of this Court, between the same parties, nothing remains to be decided in favour of the Revenue. The question is answered in affirmative and against the interests of the Revenue. The Reference stands disposed of accordingly. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.